


# Quid Novi



VOL. V NO. 23

McGILL UNIVERSITY FACULTY OF LAW  
FACULTE DE DROIT UNIVERSITE MCGILL

March 27, 1985  
27 mars, 1985

## SKIT NIGHT—Smashing Success!

Nobody stayed home to watch the Genies last Thursday night. A Lawyer's Line hit town and faculty and students turned out in force to enjoy an evening loaded with laughs and enough bumps and grinds to spare. The show appropriately fell near enough to the end of the school year to give the goings-on at Chancellor Day Hall a much needed pull earthwards.

Many themes for the skits were borrowed from the tube. Send ups on two popular television commercials, one for Ronco, the other for American Express, were hilarious, although the "most lawyers carry LL.B.'s" line sent only a faint ripple of nervous laughter through portions of the audience. Janda and Shuster's Siskel and Ebert act reviewing professorial performances was a funny idea and, I submit, sufficiently probing and useful to warrant the costs of mounting weekly screenings of "At the Lectures" on video in the Pit. Add to that "the National", a potpourri of some of the best gags of the night.

The consummate crowd pleasers were, not surprisingly, the barbs aimed at faculty members. Indeed, many of those arrows that Prof. Baker carries about in his quiver were flung back at him with fierce but friendly vigour. The last I heard, Prof. Scott was

seen scurrying towards Dorval Airport to catch a flight for Oxford. And Dean Macdonald can't keep up with all the invitations he has received begging him to lend his face for pies and fun at conventions and children's birthday parties. Prof. Crépeau, incidentally, is recovering from a mysterious abdominal wound.

There were some powerful voices to fill the hall on Skit Night and enough struttin' and snortin' across the stage to rival the best burlesque anywhere. "Java Jive" was a bluesy treat. Mark Vinet and the band got the place hopping. I still can't get the tune of "I've Got the Mens Rea for Love" out of my mind. The singers in "Nightclub Le Pit" provided pleasing and mellow diversions from the otherwise relentless rowdiness.

But my personal favourite was that jazzy production number "Big Pleader". I overheard one (male) student's mixed reaction to it: "The beginning was a nightmare; the end was a dream!"

The end of the show came with a rousing reminder that the Faculty of Law is "one singular sensation", an appropriately redeeming finale to a presentation that left no aspect of legal studies unscathed. As the heavy exercise of exams approaches, Skit Night was a timely tribute to that oft buried maxim, "there's more to life than law" -- there's also poking fun at law.

Terry Pether

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Congratulations to Cindy Cunningham and all those involved in the production for a job well done!

## Canadian Seeks Redress Through U.S. Constitution

by Michael Doyle

A leading New York lawyer has decided to use the U.S. Constitution in a bid to overturn a 20-year sentence handed a young Canadian for his part in the 1982 double-slaying of a school chum's mother and step-father.

The sentence is increas-

ingly viewed in Canada as having been unjust, prompting citizens in at least five cities to set up groups to help the young man and several national network and local television features.

Bruce Curtis, 21, of Middleton, N.S., was con-

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# ANNOUNCEMENTS

Professor Gareth Jones of Trinity College, Cambridge, will be visiting the Faculty of Law on Thursday and Friday, March 28 and 29. Professor Jones is a distinguished English legal academic of world renown. He is a fellow of Trinity College and the Downing Professor of the Laws of England in the University of Cambridge. He is co-author, with Sir Robert Goff, of the English treatise, The Law of Restitution (2nd ed., 1978) and author of numerous articles on the law of restitution, equity and the legal profession. Professor Jones is stopping off in Montreal on his way to the University of Chicago Law School where he teaches in the spring term.

Professor Jones will be giving a lecture to Professor Baker's and Professor Benson's Contracts classes on Thursday at 14h00. The topic of his talk will be: "The Recovery of Benefits Gained from a Breach of Contract". He will also be speaking to a combined Equity and Trusts class on Friday at 11h00 on the "Constructive Trust" and to a gathering open to all faculty and students in the Common Room on Friday at 15h00. The topic is to be announced.

## Roommate Wanted

Law Student seeking roommate for next academic year. The apartment is available from July 1st. For information call 522-5454 anytime.

## Bookstore

Last Day to Buy Books  
Thursday, March 21  
10:00 -- 12:00 a.m.

## Notice to First Year Students

There will be a meeting on Wednesday, April 3rd at 1:00 p.m. at which time I will outline:

1. The Early Course Selection Procedure
2. The National Programme and how to opt into and out of the National Programme
3. Degree Requirements in the Faculty.

I will also be available to discuss any other matter relating to course selection for the next Academic Year.

**R.L. Simmonds**  
Associate Dean  
(Academic)

## PARTY

LLB/BCL IV is hosting a post-election bash in Night Club Le Pit, located in the basement of Scenic New Chancellor Day Hall.

Lots of music, beer, boat races, etc. The fun begins at 5:00 p.m.

John Sopinka, well-known Ontario barrister who was involved in the recent inquiry into baby deaths at the Hospital for Sick Children, will be addressing the Faculty at 4:00 p.m. Friday, March 29, in the Moot Court.

## Quoteable Quote

"Those of you who don't understand this assume that there is some truth to the language lawyers use."

**David Stevens**  
Real Property

## Censorwatch

Elections for the executive of Censorwatch McGill for 1985-86 will be held on:

Thursday, March 28  
at 5:30 p.m.  
in Room 203

The positions to be filled are:

- Director (formerly President)
- Assistant Director
- Secretary Treasurer

If you would like to present your candidacy for any of these positions, please leave a notice to this effect in the Censorwatch mailbox, 3480 McTavish. Only candidates who have given at least 24 hours' notice will be on the ballots. Non-members may be candidates, but all candidates must be students in 1985-86.

All Censorwatch members may vote. We hope to see a full house.

## Note from the Editor: Update on Faculty Council

At Faculty Council this week the motion to reduce the number of semi-obligatory credits was deferred until September. It was felt that further examination of the proposal would allay the fear that the proposal represented a drastic change to the National Programme.

A Legal Theory course, to be taught by Prof. Benson was approved.

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# A Feminist Perspective: Reproductive Technology and Family Law

by Sidney Fisher

Recently, two conferences were held in Ottawa: one on the legal implications of reproduction and technology, and the other on family law. The former was hosted by the National Association of Women and the Law and attended by several members of the McGill caucus.

Christine Overall, philosophy professor, Queen's University, made some introductory remarks regarding the differences between feminist and non-feminist approaches to reproductive ethics. She noted that the latter are characterized by two principle elements.

The first is a tendency to concentrate on a few issues to the exclusion of others: abortion is the almost exclusive focus of inquiry. There is little discussion of women as co-creators except as containers.

The non-feminist approach is characterized secondly by a failure to challenge the underlying assumptions regarding reproduction. Infertility for example, the main justification for reproductive technologies, is assumed to be a legitimate problem only for married heterosexual women, where children are required to complete the traditional family unit.

Feminist approaches to reproductive technologies on the other hand recognize a wider range of issues, and question received opinions of what kinds of families are "normal".

For example, Overall

suggests women undergo in vitro fertilization for low sperm count in men, instead of the less painful artificial insemination by donor because of our society's strong emphasis on the biological link.

A basic element in this discussion is the issue of who is in control and who is powerless. The issue of control came out strongly in the panel discussion on manufacturer's liability for drugs and devices.

Dr. Joel Lexchin of Toronto is of the opinion that the enforcement of drug safety laws in Canada is lax, partially due to the fact that the health profession is in bed with the drug companies and therefore unable to take an adversarial role.

Lexchin pointed out the first laws in Canada regarding the safety of prescription product were only seen in 1951. The first time the drug manufacturers had to prove the product was effective as well as safe was in 1963. The I.U.D. had to be proven safe and effective, as a mechanical device separate from the drug it releases, only as of 1978.

The Dalkon Shield, a type of I.U.D., put on the market by A.H. Robbins in 1971 did not have to be proven safe or effective, even though problems with the I.U.D. were discovered one year later. No legal obligation existed on the part of Robbins to inform the public and the device remained on the market for another two years.

D.E.S., a drug which has recently received much pub-

licity, causes vaginal cancer in the daughters of women who took this fertility drug. It appeared on the market in the 1940's and was not subject to any regulation at the time, even though it was known D.E.S. caused cancer in rats and mice, and that it crossed the placenta.

In 1971, a publication linking D.E.S. to vaginal cancer was sent to Canadian doctors. The drug was then withdrawn only with respect to its use for the purpose of preventing abortions, and was not required to be withdrawn entirely from the market. It continued to be used as a morning after pill and for the prevention of lactation.

Technological control of fertility has been justified on the grounds of giving women a wider choice. The market has been inundated without the proper controls being put in place. How can adverse drug reactions be found? Who is liable? If the effects are invisible, they are presumed not to exist.

The Family Law Forum, a conference hosted by the Canadian Advisory Council on the Status of Women, also demonstrated that women have in the past exerted little control over their lives and the lives of those around them.

Judge Rosalie Silberman Abella, of the Ontario Labour Relations Board and a former Ontario Family Court judge, stated that family law was, and to some extent still is, structured to keep the family and marriage together, as well as

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## Letters

### To the Editor:

For those of us only weeks away from graduation, the time has come to consider the host of new challenges that the proverbial "Real World" has in store for the Class of '85. The nights of racing paper airplanes on the sixth floor of the library will give way to the much feared, regular "day" job with all the excitement -- and drudgery -- that goes along with it.

Soon we will be spending a substantial proportion of our days writing letters to all sorts of interesting people. Many of them will doubtless be of the highest integrity. But much of the correspondence will be to the tardy and unreliable; to impaired drivers, thieves and tax avoiders; to the mean, the mad, and moronic and the merciless -- and to civil servants! And to them all we will state at the conclusion of our threat, request or explanation, that we are "Yours truly". Yours truly!

What a dishonest statement if we think about it for a moment. While certainly dishonest, it is nonetheless consistent, since we will be writing to all of them in terms of close friendship and endearment. We will write to "My Dearest Mr. Dirtbag," as if he were a close friend for whom the letter is an unwelcome intrusion into the warmth of our long-felt affection.

The heartfelt greetings and friendly conclusions will seem inconsistent when compared to the body of our letters. If the loansharks from the firm of Dewey,

Cheatum and Howe are such trusted allies, why do we threaten them with criminal charges. We have been taught here that practicing good law implies using words as proficiently as possible. Perhaps we should be prepared to make our correspondence just as proficient. I suggest that when the occasion calls for it, we head our correspondence "Mr. Noodelman", "Ms. Killjoy", and "Boy George", instead of "Dear Mr. Noodelman", and "Dearest Georgy". If we want to attract the attention of an unresponsive civil servant, we could write "Free baseball tickets enclosed", instead of "To Whom it may Concern".

But I think that honesty and pragmatism can best shine through in our concluding remarks. To a recalcitrant debtor we could end "Yours with Respect to What is Ours"; to a convicted rapist we could conclude "Yours is the Lowest of Low Life"; and to a long-forgotten Property professor "Yours in Perpetuity".

With some imagination and a little honesty, ours could be the generation of honest corresponders. Please know that I am,

**The Best Fisherman  
in the Faculty,  
Murray MacDonald**

### A Feminist Perspective Cont'd from p. 3

providing for a distribution of assets and children.

Recent changes in family law have involved a move toward equity. In the

**Cont'd on p. 5**

# Placement Centre

## Ontario

**Ottawa:** The Department of Justice, Canada, is holding its annual recruitment programme inviting law students to apply for articling positions. Interested students should refer to the poster displayed in the Placement Centre and are invited to pick up application forms in the Admissions Office.

The firm of Farber & Segal, require an articling student for the 1985/86 year. Candidates are asked to contact Mr. Michael D. Segal or his secretary, Dawn, to arrange for an interview.

Farber & Segal  
330 Churchill Avenue  
Westboro Manor  
Ottawa, Ontario  
K1Z 5B9  
613-522-9418

Refer to posting #87.

**Toronto:** Students who are planning on submitting applications for summer and articling positions to the firm of Blaney, Pasternak, Smela & Watson are asked to send all documentation to the Chairman of the firm's Articling Committee, Mr. J.L. Freelan and addressed in the firm's new name of Blaney, McMurtry, Aarons, & Watson.

Blake, Cassels & Graydon have submitted to Centre, their O.A.L.S.A.C. Articling Placement Survey relating to the 1986/87 articling year. Please bear in mind that this firm's articling brochure is available for perusal in the Admissions Office. Refer to posting #89.

## Quebec

**Montreal:** The Ogilvy, Renault recruiting brochure was recently sent to all second year B.C.L. students and third year national program students at McGill. The recruiting brochure has also been made available to all other McGill students through the Placement Centre. Although we intend to conduct our interviews during the months of August and September of 1985 for the selection of students for the summer of 1986, we would be pleased to receive applications now from any students applying for the 1986 summer and wishing to have an interview in March or in early April (1985) or at some other mutually convenient time.

Any students interested in having an early interview, should send a letter of application, a curriculum vitae and their most current transcript of marks to the Chairman of our Students Committee, Mr. G.B. Maughan, at our above Montreal address. Students may also drop off their application with our receptionist on the 12th floor at our office in Montreal. We will advise students as quickly as possible whether they have been selected for an interview.

Anyone wishing further information should not hesitate to contact Norman Steinberg at 286-5424. Refer to posting #88.

Students are reminded that c.v.'s are still being accepted in the Admissions Office for the position with Bronstetter Wilkie & Mount Sinai Hospital. Those interested in applying are urged to submit their c.v.'s as quickly as possible.

## A Feminist Perspective Cont'd from p. 4

past, it was possible to identify the victim and the villain. Today, the search for the source of the disintegration has taken a back seat -- the law in fact should not single out a faulty spouse, because, says Abella, it is not the law's business.

Trying to save the family has been replaced by trying to save its members. This has on one hand been reflected by a recognition of the division of labour.

In his dissent in *Murdoch v. Murdoch* [1974] 1 W.W.R. 361, Laskin J. (as he then was) applied the concepts of constructive trust and unjust enrichment to matrimonial property. Dickson J. (as he then was), Laskin C.J.C. and Spence J. followed this lead in *Rathwell v. Rathwell* [1978] 2 S.C.R. 463, which suggested that courts should be sensitive to the different forms in which spouses can contribute to the family relationship.

Another effort at trying to continue that which went on before the breakup is joint custody, that is, joint physical custody.

This permits a continuance of parenting after separation or divorce; however, it requires two parents who can cooperate in good faith with each other, and may cause confusion for the child. It is also a monetary impossibility for many families to maintain two households. Custody, as well as other aspects of marriage breakup, works better when there is a consensus between the parties rather than a judgment being imposed by a third party.

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## SPORTS

Hockey was not the only report at the 1985 Canada Law Games held last month in London. In fact, McGill sent teams in broomball, co-ed volleyball and snooker. Moreover, we won championships in men's curling, women's squash and women's ping pong.

McGill sent three curling teams to the Games -- a sign of the rising popularity of this thrilling sport. The women's team included Del Daignault (skip), Andrea "Boo" Lockwood (third), Shawn Cathcart -- as well as the greatest lead-rock thrower in the history of women's curling at McGill law -- the incomparable Bettina Karpel. Our women faced some tough competition, -- but they came through. Until, that is, they were clearly beaten by a Western team and eliminated from the competition by a bunch of inane rules developed by the tournament organizers.

The McGill A men's team was also beaten by a UWO team in the semis. The A's were a team of the West. Lyle Carlstrom was at the helm -- the pride of Bear Canyon, Alta., a master of the game. The third was Dean Proctor from Swift Current, whose form was pure poetry on ice -- the JoJo Starbuck of curling. Rob Smith and Richard Quon represented Chilliwack B.C. and Lethbridge respectively. Alas, our boys were defeated by bad luck (shots missed by millimeters) and bad drinking.

The surprise of the tournament, however, was the Men's B team. These guys were supposed to be the Leafs of legal curling. But they were led by the ever-unflappable Dale Lysack -- the epitome of "cool" under pressure.

This team included Dave Thompson (third), Henry Schultz (second) and the astonishingly taciturn Andrew Coti (lead). By dint of sheer effort, tremendous stamina and truly amazing luck, they beat teams from UNB, Western, and Windsor, finally taking the championship with a heart-stopping squeaker of a game -- defeating the Western C team who had earlier defeated our A's.

McGill won two other championships. Jill Samis, as expected, decisively thrashed her opponents in women's squash to take the title yet again. Valerie Teroux took the crown in women's ping-pong, sweeping through the tournament without losing a single game.

Win or lose, the Law Games were a complete success. Whether we were eating, drinking, or dancing to excess, or simply meeting other law students (and not talking law) it was a Tong weekend well spent. And, if nothing else, for those of us who went elsewhere to school, it was a chance to see what we missed at that grand country club, the University of Western Ontario.

Many thanks to Debbie Duncan and Nick Vlahos. They organized us -- and the trip -- extremely well. Next year, the Games will be held at Queen's. McGill should be able to do even better in 1986.

Henry Schultz

#### A Feminist Perspective Cont'd from p. 5

Mediation can accomplish this, for as Judge Abella notes, a good bargain is better than a good fiat. She suggests that special-

ized family courts be entrenched all across Canada (presently, only five provinces have them) to accommodate this move toward social change.

The Honourable John Crosbie, Minister of Justice, addressed the conference and announced that the proposed amendments to the Divorce Act would become law in April and would be accompanied by legislation providing for the enforcement of alimentary pensions. This is a welcome move and is in keeping with Judge Abella's proposal that the aim of family law is no longer to save the family at all costs, but rather to save its individual members.

#### Canadian Seeks Redress Cont'd from p. 1

victed by a New Jersey trial court of aggravated man-slaughter for shooting his friend's mother, shortly after his friend shot the step-father.

In Montreal, a prisoners' rights group -- the Offices des Droits des Détenues -- has thrown its support behind Curtis and volunteers have set up a special "Bruce Curtis Committee".

Similar committees have sprung up in Ottawa, Halifax, Toronto, and Vancouver. Edeet Ravel, a member of the Montreal group, said it has about 13 members and has already raised a small amount of money. The group has held a candlelight vigil to celebrate Curtis's 21st birthday and members have been writing him letters.

Lawyer Michael Shaw of New York said in a telephone interview that he will frame his argument around the U.S. 14th Amendment and use the writ

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## Canadian Seeks Redress Cont'd from p. 6

of habeas corpus in an effort to have Curtis released from a New Jersey penal institution. Both the constitutional amendment and the writ require that a person not be imprisoned without first having been dealt with by the "due process of law", a concept which is interpreted differently in varying jurisdictions.

Curtis failed to sustain an appeal in New Jersey Superior Court and was refused leave to appeal by the Supreme Court of New Jersey. The latter court gave no reasons. Defence lawyers argued that the trial court accepted masses of irrelevant evidence, put unwarranted and undue emphasis on deterrance and failed to allow the jury to consider strong arguments that what really happened was an accidental shooting by Curtis. Product of a Nova Scotia private school, son of a retired Canadian military officer, Curtis is described by the defence as having found himself caught in a pathologically violent family when he visited his school friend. The visit was granted by his parents as a graduation gift. Curtis's former buddy made a deal with the prosecutor and testified against Curtis in hopes of a lower sentence for himself.

The 20-year sentence was the maximum and a trial judge known for his harsh sentences made it a requirements that the Canadian not be granted parole for 10 years.

The constitutional due process clause was originally useful in the U.S. federal courts only where the challenge was to a state court's jurisdiction -- rather than its rationale. But its scope has been broadened in a series

## Unsung Heroines

Sara Andrews Spencer was the first woman to address a convention. She addressed the 1867 GOP convention in Cincinnati against disenfranchisement of women.

Belva Lockwood -- First woman to practice before the Supreme Court (1879). She ran for President in 1884.

Kit Welsh -- Fought the British army disguised as a man. She was given a full military funeral when she died as a retired "Trooper".

Janet Guthrie -- First woman to drive in the Indianapolis auto race.

Clair and Mary Weste -- Created a pie divider to avoid argument over "who

had the biggest piece" of pie.

Anna Taylor -- Became the first woman to go over Niagara Falls in a barrel, October 24, 1901.

Mary Gartside -- The first person in the U.S. to have her appendix removed, July 4, 1885.

Maria Mitchell -- Discovered a comet from the roof of her home, in 1847. She became the first woman to be elected to the Academy of Arts and Sciences.

**National Association of Women and the Law, Vol. 5, No. 9, February, 1985.**

of recent decisions.

John Curtis, father of Bruce Curtis, said yesterday he has decided in principle to go ahead with the appeal. But he has not decided which court to use. He could use the federal court in New Jersey or the U.S. Supreme Court. The latter court would be less likely to hear the appeal unless it represented new law but if he starts in the New Jersey federal court, he might end up with the cost of additional appeals in the U.S. federal system. Curtis said he has spent about \$100,000 defending his son and has about half the money available to make a further appeal. John Curtis said he originally expected to see justice done in the lower U.S. courts. "We saw them go through the motions, but we certainly didn't see any justice," he said.

The father said he now takes the same view as one of his U.S. lawyers -- the

court operated in a "goal-oriented manner" deciding what it wanted to do and then constructing its decision to suit the goal. John Curtis said he cannot trigger a treaty between Canada and the U.S. which would allow his son to serve his U.S. sentence in Canada. A defect in the state's constitution does not allow the state legislature to ratify the treaty signed by the U.S. federal government.

If Curtis were brought home before all avenues of appeal were exhausted, he would have no option but to serve out the U.S. sentence here, said Jean-Claude Bernheim of the prisoners' rights group.

Meanwhile, Bruce Curtis has been studying philosophy by correspondence from Queen's University in Kingston, Ont., and will be taking other courses, his father said.

**Announcements**  
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**Lawyers for Social  
Responsibility to Show  
Unreleased "Nuclear Winter"  
Film**

The very successful Nuclear Filmseries presented by the McGill Chapter of LSR ends tomorrow (Thursday 28th March) with a North American premiere of A Change in the Weather in Room 201 at 1:00 p.m., and a wine and cheese party in the Common Room at 4:00 p.m.

Tomorrow's film is the work of European Scientists Against Nuclear Armaments. It presents cosmologist Carl Sagan's Nuclear Winter hypothesis. Sagan and his group have shown that the use of a small percentage of the current arsenal of nuclear weapons -- with or without retaliation by the "other side" -- will lead to changes to the climate that will fatally freeze and then fry the planet. Sagan's study has since been independently verified by a Pentagon study.

Sagan's findings are not just icing on the "nuclear-war-will-be-awful" cake. The Nuclear Winter Study -- which demonstrates that a nuclear arsenal is as effectively defensive as a double-barreled shotgun, one barrel of which is designed to kill its user -- is seen by strategic analysts and opponents of the arms race as the most significant contribution to mankind's retreat from the nuclear precipice. This is illustrated by the speed with which Sagan and his team were summoned to briefings with the US, Canadian and British governments shortly after publication of the findings.

What remains now, it seems, is to find a way to tell people that four decades of nuclear strat-

egy were a costly, dangerous, and empty mistake. This film is part of the effort to get the message out.

LSR were extremely fortunate to obtain a pre-release research copy of this film. It should not be missed.

(Neither should the wine and cheese party, where plans for next term's activities will be discussed.)

**McGill Law Journal  
Revue de Droit de McGill**

Information Session

First and second year students are invited to come and find out about the Law Journal and the opportunities for working on the Journal during the summer and the next school year.

Coffee and doughnuts will be provided.

Wednesday, March 27,  
Common Room, 12:30.

Scéances d'Information

Les étudiants(es) de 1<sup>e</sup> et 2<sup>e</sup> années sont cordialement invités(es) à participer à la scéance d'information de la Revue de droit et de s'informer des possibilités de travail à la Revue pendant l'été et l'an prochain.

Des beignes et café seront servis.

Mercredi, le 27 mars,  
Common Room, à 12:30hres.

**Women & the Law Present:**

"Mediation: A Litigation Alternative"

--A. Murray, lawyer

--G. DiPace, psychologist

The Family Mediation Service

Thursday, March 28  
1 p.m., Room 204

# POEMS

**Quid Novi Presents  
Tender Thoughts  
for  
Trying Times**

How do I love thee  
Let me count the ways  
I just can't think of any  
Exams are within days.

I crave the scent of Pineau  
I thrive on ratios made  
My only future interests  
Lie with Megarry and Wade.

I see you're really suffering  
I'm driving you insane  
It says in Wilkinson & Downton  
I'm responsible for your pain

So let's rewrite this contract  
These terms are harsh and cruel  
We'll find true meeting of the minds  
When I get out of school.

**When Do Rhetorical  
Questions Get Boring?**

When do rhetorical questions get boring?  
When do birds fly in the breeze?  
When do you catch old men snoring?  
When can you eat ham and cheese?

When is a scream like a whisper?  
Why do these queries exist?  
Why can't their teaching be crisper?  
How long might these people persist?

--Matthew D. MacKay